

Paper No. 10
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APRIL 29, 98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tempo G

Serial No. 74/580,166

Thomas I. Rozsa for Tempo G

Charles T. J. Weigell, Trademark Examining Attorney, Law
Office 109 (Deborah S. Cohn, Managing Attorney)

Before Simms, Seeherman and Hairston, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Tempo G has appealed from the refusal of the Trademark
Examining Attorney to register GEL-TAPE as a trademark for
"flexible pressure sensitive adhesive base carrier tape for
automatic handling of raw wafer dies and other surface-mount
components."¹ Registration has been refused pursuant to
Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1),

¹ Application Serial No. 74/580,166, filed September 29, 1994,
asserting a bona fide intention to use the mark in commerce.

on the ground that applicant's mark is merely descriptive of its identified goods.

Applicant and the Examining Attorney filed briefs; an oral hearing was not requested.

We affirm the refusal of registration.

Charles Gutentag, applicant's president, has submitted a declaration explaining that applicant's goods are a variety of continuous carrier tape, made to contain electronic surface mount components for automatic handling. In the electronic component and assembly industries the conventional forms of standardized carrier tape in general use are referred to as "punched tape" and "embossed tape." Applicant's product is a new type of carrier tape. Mr. Gutentag states that this new form of goods named 'GEL-TAPE' is the subject of a U.S. patent application "entitled CARRIER TAPE PACKAGING SYSTEM UTILIZING A LAYER OF GEL FOR RETAINING SMALL COMPONENTS." He also asserts that the term GEL-TAPE serves "to distinguish the form of these newly devised goods from the conventional, standardized forms of 'punched tape' and 'embossed tape'."

A mark is merely descriptive of goods or services, and therefore unregistrable, if it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service.

In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985).

It is clear from the evidence of record, as well as applicant's own identification, that "carrier tape" and "tape" are generic terms for applicant's identified goods. Moreover, Mr. Gutentag's declaration and the patent for the goods show that the word "gel" describes a significant characteristic of the carrier tape, which features a "thin resilient flexible gel layer." Mr. Gutentag has stated in his declaration that the word "gel" has a definition which embraces materials physically described as "flat flexible film" and "non-porous air-impermeable thin flexible film." When these two descriptive words are combined as GEL-TAPE, the resultant mark immediately conveys to purchasers that the identified goods are carrier tape which has a gel layer, i.e., a "flat flexible film" or "non-porous air-impermeable thin flexible film."

This case, thus, differs from those cited by applicant, in which two admittedly descriptive terms, when combined, were found to result in a composite which was not merely descriptive. Cf. **Application of Colonial Stores, Inc.**, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (SUGAR AND SPICE, in addition to describing the ingredients of bakery products, brought to mind the nursery rhyme). Despite applicant's assertion, the composite GEL-TAPE is not a fanciful term;²

² The fact that a party may be the first or only user of a term does not make it "fanciful and creative." Moreover, it is a well-established principle of trademark law that one cannot

it does not convey any meaning other than a tape with a gel component.

Further, the very manner in which the descriptive terms "gel" and "tape" have been combined in applicant's mark reinforces their descriptive connotation, since GEL-TAPE has the same format as the designations "punched tape" and "embossed tape," terminology which applicant states are common industry terms for these other types of tape. Consumers will thus perceive GEL-TAPE as describing or naming a particular type of carrier tape, rather than as identifying the source of the goods.

We have noted applicant's argument that, because its mark GEL-PAK has been registered for chip trays, GEL-TAPE should similarly be registered for carrier tape. We do not know what evidence was before the Examining Attorney in that application, but our determination of registrability must be based on the record before us, and on this record we find GEL-TAPE to be merely descriptive of applicant's identified "flexible pressure sensitive adhesive base carrier tape for automatic handling of raw wafer dies and other surface-mount components.

exclusively appropriate a descriptive term simply because one is the first user of the mark or the only producer of the particular goods.

Decision: The refusal of registration is affirmed.

R. L. Simms

E. J. Seeherman

P. T. Hairston
Administrative Trademark Judges
Trademark Trial and Appeal Board